

591099

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Plaintiff,

- vs -

Defendant.

Civil  
Action No.  
S90-00056

The Deposition of CLAUDE BREWTON

Date: Thursday, September 3, 1992

Time: 2:00 o'clock p.m.

Place: Office of Midwest Reporting  
300 North Michigan Street  
South Bend, Indiana

Called as a witness by the Defendant  
in accordance with the Indiana Rules  
of Civil Procedure pursuant to Notice.

Before Annette S. Hyndman  
Notary Public, Elkhart County, Indiana

**MIDWEST REPORTING**  
300 North Michigan Street  
South Bend, Indiana 46601  
(219) 255-3121

COPY

1  
2 APPEARANCES:3 MR. PETER E. JAFFE  
4 Environmental Enforcement Section  
5 Environment & Natural Resources Division  
6 United States Department of Justice  
7 Post Office Box 7611  
8 Ben Franklin Station  
9 Washington, D.C. 2004410 MR. KURT N. LINDLAND  
11 United States Environmental Protection  
12 Agency  
13 Region 5: CS-3T  
14 77 West Jackson Boulevard  
15 Chicago, Illinois 60604

16 On behalf of the Plaintiff;

17 MR. PIERCE E. CUNNINGHAM  
18 Frost & Jacobs  
19 2500 Central Trust Center  
20 201 East Fifth Street  
21 Cincinnati, Ohio 45202

22 On behalf of Penn Central Corp.;

23 MR. PAUL J. LAMBERT  
24 Bingham, Dana & Gould  
25 Suite 1200  
1550 M Street, N.W.  
Washington, D.C. 20005

On behalf of Conrail;

MR. JAMES V. WOODSMALL  
Warrick, Weaver & Boyn  
Suite 400, Midwest Commerce Building  
121 West Franklin Street  
Elkhart, Indiana 46516-3284

On behalf of Elkhart Office Machines.

## ALSO PRESENT:

Mr. Thomas P. Pendergast, Consolidated  
Rail Corporation

I N D E X

THE DEPOSITION OF  
CLAUDE BREWTON

DIRECT EXAMINATION

By Mr. Cunningham ..... Page 4

CROSS-EXAMINATION

By Mr. Lambert ..... Page 20

CROSS-EXAMINATION

By Mr. Lindland ..... Page 47

CROSS-EXAMINATION

By Mr. Woodsmall ..... Page 78

REDIRECT EXAMINATION

By Mr. Cunningham ..... Page 84

RECROSS-EXAMINATION

By Mr. Lambert ..... Page 94

\* \* \*

E X H I B I T S

DEFENDANT'S

MARKED

Exhibit 1 ..... Page 8  
(Affidavit of Claude Brewton)

NOTE: Per instruction of Mr. Cunningham, a copy of Exhibit 1 was substituted for the marked original, which was inadvertently taken from the room.

\* \* \*

1                                   CLAUDE BREWTON,  
2           called as a witness by the Defendant, having been  
3           first duly sworn, was examined and testified as  
4           follows:

5                                   DIRECT EXAMINATION

6           BY MR. CUNNINGHAM:

7           Q    Claude, would you state your name, please.

8           A    Claude Brewton, B-r-e-w-t-o-n.

9           Q    [REDACTED] (b) (6)

10          A    Yes.

11          Q    Do you still work for the Elkhart Police  
12               Department?

13          A    Yes.

14          Q    And it's my understanding that you are a Captain of  
15               the Services Division; or at least you were when  
16               you and I talked in February of 1992.

17          A    I am.

18          Q    All right. If you will, tell us briefly about your  
19               railroad background.

20                       It's my understanding, and correct me if I'm  
21               wrong, that in 1962, sometime in the spring, you  
22               began to work at the Elkhart yard for what was  
23               then, as I recall, New York Central; is that  
24               correct?

25          A    That's correct.

1 Q And eventually New York Central merged with the  
2 Penn Railroad and later became Penn Central  
3 Railroad, right?

4 A Yes.

5 Q Your first job there was as a switch tender in the  
6 tower; is that correct?

7 A I had a couple of locations; but, as a switch  
8 tender, yes.

9 Q You also did some switching at the Oakland Avenue  
10 location.

11 And then, beginning in '66, 1966, for a  
12 period of about three years until '69, your  
13 position was that of a keypunch operator.

14 And those offices were clerical offices  
15 located below or someplace near the tower; is that  
16 right?

17 A In part.

18 Q Okay. Feel free to say --

19 A I hired out in, I believe, March of '62 as a switch  
20 tender. And that was for a short period of time.  
21 I'm not sure how long it was.

22 And then I became a clerk. And most of the  
23 years that I was there, of the seven years I was  
24 there, I was a clerk in the hump yard office,  
25 except for that very beginning period of time.

1                   And then in the middle or so of that period  
2 of time, I spent a year working for the management  
3 team, traveling the system on behalf of management.

4                   Then I returned to being a clerk at the yard.

5       Q   Let's concentrate, if we will, on the period  
6 between 1966-1969.

7                   Is it correct that during that period you  
8 were responsible for updating waybills on railway  
9 cars that would come into the Elkhart yard?

10       A   No.

11                   What I did was -- there were various  
12 functions within the office. There's the bill rack  
13 job; there are jobs where you transmit, at that  
14 time, IBM card, tape, transmit it to other  
15 locations as to what train makeups were headed  
16 their way.

17                   Two of my primary jobs were -- and then there  
18 was -- well, two of my primary jobs were editing  
19 those cards or making new cards when necessary.  
20 That was one position.

21                   Another position was preparing the hump list.

22       Q   But at all times you were at the Elkhart yard  
23 between '66 and '69?

24       A   Yes.

25       Q   Tell us a little bit about what the Elkhart yard

1 was.

2 I think you stated to me at one time it was a  
3 "Gateway to the West." What does that mean?

4 A I was saying that that's what the sign said at the  
5 railroad yard entrance.

6 It was the Robert Young Yard. And it was  
7 known as the Gateway to the West because it was  
8 a -- I believe probably still is -- a major  
9 connection between the eastern lines and the  
10 western lines.

11 Q Claude, it's my understanding that you read a  
12 newspaper report or account with respect to the use  
13 of carbon tetrachloride at the Elkhart yard and, as  
14 a result of that, became somehow connected with  
15 this case; is that right?

16 A I would word it differently.

17 Q Word it whatever way you want.

18 A Sorry.

19 Q Go ahead. How did you become --

20 A There had been articles off and on about  
21 groundwater contamination and how EPA was in the  
22 area checking. And they named a number of  
23 chemicals; one of which was carbon tetrachloride.

24 And I knew of a spill that I had been made  
25 aware of back in the '60s. And I just figured that

1           they would find it.

2           And, over a period of time, I'm not sure how  
3           long, but I would say several years, every now and  
4           then there would be an article.

5           And in this one case, they had a plea in the  
6           newspaper for any information. Because they  
7           apparently hit dead ends, and they -- so they had  
8           asked that anybody with any information about any  
9           possibilities to contact them, even anonymously.  
10          But they needed the information.

11          So I contacted them. I believe it was Jan  
12          Carlson that I talked to at the EPA in Chicago. I  
13          think she was my first contact. And I told her who  
14          I was; I didn't do it anonymously. But I told her  
15          what I knew.

16          Q   As a result of that telephone conversation, did you  
17               later, then, sign an affidavit that is dated  
18               January 2nd, 1990?

19          A   Yes, I did.

20                       MR. CUNNINGHAM: It would  
21                       probably be a good idea if we marked  
22                       that as Brewton Exhibit No. 1.

23                       (Defendant's Exhibit 1 marked.)

24          Q   I'll show you what now has been marked as Brewton  
25               Defendant's Exhibit 1.



1                   Is that the affidavit that you eventually  
2                   signed for the EPA?

3           A    Yes, it is.

4           Q    Can you tell us a little bit about the  
5                   circumstances surrounding the signing of that  
6                   affidavit?

7                   First of all, did someone come down and take  
8                   this from you in shorthand and then transcribe it,  
9                   or how did that go, Claude?

10          A    No. I had had telephone conversations with a  
11                   couple of different people. And I don't know all  
12                   the names.

13                   And then, you know, I'd have a phone call.  
14                   And then maybe it would be some months later, or  
15                   whatever, before I'd get another phone call. So  
16                   this is spread out over a period of time.

17                   And somewhere along the line, I was sent an  
18                   affidavit concerning this. And it was a case of --  
19                   you know, a lot of it was the way I would want to  
20                   word it. But I preferred to word it otherwise or  
21                   this wasn't quite correct or whatever.

22                   So I thought the easiest thing for me to do  
23                   would be to sit down and type up my own. And  
24                   that's what this is. Using their format, I typed  
25                   this (indicating).

1 Q Did the EPA -- you can keep that in front of you.

2 Did the EPA first send you their version of  
3 the telephone conversation that you had in  
4 connection with your statement?

5 A They did send me an affidavit. And so that would  
6 be their version, I guess.

7 Q Then you modified it, apparently. That original  
8 statement or affidavit was not to your  
9 satisfaction?

10 A That's correct.

11 Q Then you conveniently drew your own; is that a fair  
12 summarization?

13 A That's true.

14 Q Let's take a look for a moment at Paragraph 4 of  
15 the affidavit. Do you see that?

16 A Yes.

17 Q I'm going to ask you, basically, questions about  
18 things that are within your personal knowledge  
19 rather than things that you may have heard about.  
20 So it is with that qualification that I'll ask you  
21 some of these questions.

22 You'll notice, in the first sentence: "I was  
23 told of an incident on track No. 69 which resulted  
24 in the release of carbon tetrachloride onto the  
25 ground of the rail yard."

1 I take it by that statement that you have no  
2 personal knowledge of any release of carbon  
3 tetrachloride into the ground on track 69 at the  
4 Elkhart yard; is that right, Claude?

5 A Right. I didn't see that happen and was never at  
6 the location.

7 Q And that's why the words "I was told of an  
8 incident" --

9 A Right.

10 Q In our discussions before today, I believe I asked  
11 you who it was that may have told you about that.  
12 And, correct me if I'm wrong, you searched your  
13 records and your memory, and you could not recall  
14 who that was; is that right?

15 A Right. I can't -- I cannot recall specifically who  
16 first brought that to my attention.

17 I know that it was a matter of discussion  
18 between me and a fellow worker who worked in the  
19 same room. But, other than that, I don't know.

20 Q So that your knowledge of any alleged spill of  
21 carbon tetrachloride basically is hearsay; is that  
22 right?

23 MR. LAMBERT: Objection.

24 MR. LINDLAND: Objection. That

25 calls for --

1 BY MR. CUNNINGHAM:

2 Q Well, first of all, let me ask you, as a layperson,  
3 do you understand what hearsay is?

4 A As long as I've been in law enforcement, I'm still  
5 not comfortable with defining the terms.

6 Yet my belief would be it is what I may have  
7 been told compared to what I observed.

8 Q And which category does the knowledge or statement  
9 in Paragraph 4 fall into?

10 A Something I was told; something I did not observe  
11 occur.

12 Q Now, on Paragraph 5, you want to take a look at  
13 this for me for just a minute.

14 A Yes.

15 Q With respect to the hole in the tank car, did you  
16 see, first of all, any collision between two tank  
17 cars yourself?

18 A No.

19 Q From what I can see, your personal knowledge is  
20 limited to the large hole in the west end of a tank  
21 car that was in the Elkhart yard at that time; is  
22 that right?

23 A Right.

24 Q Do you recall when that was?

25 A What year we're talking about do you mean?

1 Q Yes. Or the best you can do there.

2 A I think that it's during the period of 1966 to  
3 1969. And if I were to have to start digging  
4 through a bunch of material to try to located it,  
5 I would start in 1969. But I cannot specifically  
6 tell you it was 1969.

7 And if it were 1969, it would have to be the  
8 first six months -- five months. Because as of  
9 June 1st of that year, I left the railroad to join  
10 the police department.

11 Q All right. But as far as any collision between  
12 two cars in the Elkhart yard itself, you have no  
13 personal knowledge of that at all; is that right?

14 A Not in regards to this incident, no.

15 Q Again, anything you would have heard with regard  
16 to the cause of that hole being there was from  
17 someone else; is that right?

18 A Right.

19 I was -- it had the same car number on it  
20 as was on a waybill of a car that -- tank car  
21 that had contained carbon tetrachloride, which  
22 was one of several cars, in fact. Which did --  
23 which, from what I had been told, one of those  
24 cars had been involved in this incident. And  
25 that's why I paid attention to that car with the

1 hole in it.

2 Q Now, with respect to the railroad companies that  
3 had tank cars at the Elkhart yard during those  
4 years, were there numerous companies that would  
5 have tank cars there?

6 A Yes.

7 Q And that would include such companies as Burlington  
8 Northern, the various -- well, have you -- strike  
9 that.

10 What were the various companies that had tank  
11 cars that you can recall using the Elkhart yard at  
12 that time?

13 A A limited number would include SHPX, UTLX, GATX.

14 MR. LAMBERT: A little bit slower,  
15 please.

16 THE WITNESS: I'm sorry.

17 A SHPX, UTLX, GATX. And I'm sure that there are some  
18 others.

19 This particular car was gray in color. Some  
20 are black; some are gray. This particular one was  
21 gray, if that matters at all.

22 BY MR. CUNNINGHAM:

23 Q What's your best recollection as to who owned that  
24 tank car?

25 A I'm thinking -- I don't know is my answer.

1 Q All right.

2 A But I would think that it was SHPX or UTLX. I  
3 can't even tell you why I think that.

4 Q Well, let's ask you another question.

5 With respect to Penn Central or New York  
6 Central, would the car have been owned by them?

7 A I don't know who owned the different tank cars. I  
8 don't know if railroads owned those or if chemical  
9 companies owned those.

10 Q But you have no specific recollection of it being a  
11 Penn Central car?

12 A No.

13 Q And when you saw the tank car with the hole in it,  
14 you don't recall the day, the month, or the year  
15 precisely; is that correct?

16 A No, I don't.

17 Q How did you learn of the occurrence; do you recall?

18 A Not specifically.

19 I don't know if it was the fellow that I was  
20 working with in this smaller room among the larger  
21 offices, if he's the one who came in and mentioned  
22 it to me, or if perhaps the yardmaster called it  
23 down over the speaker, or how I came to learn about  
24 it.

25 Q Now, you again have before you the exhibit. Under

1 Paragraph 6, are you familiar with that paragraph?

2 A Yes.

3 Q All right. You notice the word "speculated" is  
4 used there.

5 "Employees speculated that the tank car  
6 containing carbon tetrachloride collided with  
7 another rail car on track No. 69 with such force,  
8 that the east knuckle of the other rail car  
9 penetrated the west end of the tank car."

10 Why did you use the word speculated?

11 A Because I had no knowledge of anyone having  
12 witnessed the incident occurring.

13 Q All right.

14 A And that there was discussion as to how in the  
15 world that hole could be so high up.

16 Q Okay. Did you ever go out to the tank car itself  
17 and look on the ground to see if anything had been  
18 spilled?

19 A No, I never went out there.

20 Q Did anyone else, to your knowledge?

21 A I was told that a switchman discovered this as he  
22 was coupling up the tracks. They were preparing  
23 the Streator Santa Fe cars for an outbound train.

24 Q Do you know his name?

25 A No.



1 Q Again, that's why this would be speculation; is  
2 that correct?

3 A Right.

4 Q The next sentence says, "It was speculated that the  
5 tank car had not been sufficiently retarded when it  
6 was rolling down the hump."

7 Again, you have no personal knowledge of  
8 whether that is true or untrue; is that right?

9 A That's right.

10 Q And, also, you know of no witnesses to the incident  
11 itself; is that right?

12 A That's right.

13 Q I hate to belabor the point, but I do want to make  
14 the record clear.

15 You yourself did not see any carbon  
16 tetrachloride go into the ground, nor did you  
17 witness an accident; is that right?

18 A The accident that we're talking about, I did not  
19 witness. And I've not seen that chemical go into  
20 the ground.

21 Q And you had no personal knowledge, first of all, if  
22 any carbon tetrachloride went into the ground or  
23 how much; is that right?

24 A I didn't see any go into the ground.

25 Q And you would not have observed, would you, Claude,

1           whether the tank car that had the hole in it came  
2           into -- of your own knowledge -- Elkhart full or  
3           empty; is that right?

4           A    Right. I did not observe it coming in, so I  
5           can't say whether it came in with a hole in it or  
6           not.

7           Q    So if we were to speculate, which we hate to do in  
8           these matters, one could easily speculate that  
9           perhaps the tank car that we were talking about had  
10          been damaged and received a hole in it in  
11          Cleveland, since it was coming in from the East,  
12          and perhaps spilled whatever was in that tank car  
13          at that point, and then come in empty to Elkhart?

14                   MR. LAMBERT: Objection.

15                   MR. LINDLAND: Objection. That  
16           calls for speculation.

17                   MR. CUNNINGHAM: I'm just asking.

18          Q    I mean is that an equally valid speculation in  
19          accordance with what the EPA suggested to you?

20                   MR. LAMBERT: Same objection.

21          A    They didn't suggest anything to me.

22                   The car would not have -- I mean I don't know  
23          of anybody who saw the damage occur to the car.

24           BY MR. CUNNINGHAM:

25          Q    Okay.

1           A    Okay. That car, as I was told, was the one  
2               involved in this incident. And so it stayed in the  
3               yards for a number of days or maybe even two or  
4               three weeks. I'm not sure. Because it was not fit  
5               to travel in its condition, apparently.

6               So I -- if it had occurred elsewhere, I don't  
7               think they would have sent it to us. They wouldn't  
8               knowingly have sent it to us.

9           Q    I guess a more direct question might be: You can't  
10               say, can you, one way or the other if the damage to  
11               the car could have occurred before it reached  
12               Elkhart of your own personal knowledge, can you?

13               MR. LINDLAND: Objection.

14               THE WITNESS: What am I going  
15               to --

16               MR. LINDLAND: You can still  
17               answer. It's just for the record.

18               THE WITNESS: I see.

19           A    Right. I don't know where that damage occurred by  
20               my own direct knowledge.

21           BY MR. CUNNINGHAM:

22           Q    And you don't know, do you, whether the person who  
23               told you about this knew for a fact that it  
24               happened in Elkhart or not, do you?

25           A    No, I don't.

1 Q It's my understanding that you did not leave the  
2 inside of the building where you were when you  
3 observed the hole in the tank car; is that right?

4 A That's true.

5 Q So that you would not have had an opportunity to  
6 get close enough to detect any odor, such as carbon  
7 tetrachloride, would you?

8 A True.

9 Q And you don't know anybody who did, do you?

10 A I don't know who did.

11 MR. CUNNINGHAM: Okay. I think  
12 that's all I have.

13 MR. LAMBERT: My turn. If  
14 you'll try to move back a little bit,  
15 it would be good to keep the reporter  
16 between us so that we don't cut her  
17 out.

18 CROSS-EXAMINATION

19 BY MR. LAMBERT:

20 Q My name is Paul Lambert. I represent Conrail,  
21 which took over the yard in 1976. Mr. Cunningham  
22 represents Penn Central, who operated the yard  
23 prior to that time.

24 What I'd like you to do is answer some  
25 questions in your own words, rather than Mr.

1           Cunningham's words, describing how -- from the  
2           beginning, about how the incident first occurred.

3           In other words, what was the first thing that  
4           you learned; and then, sequentially, what were the  
5           subsequent developments in what you learned or what  
6           you heard with respect to this tank car.

7           Starting at the beginning, what was the first  
8           thing you heard with respect to an incident  
9           involving a tank car?

10          A    I don't know --

11                   MR. CUNNINGHAM:  Wait a minute.

12                   Objection as to the characterization  
13                   of the witness' testimony as being  
14                   other than his own.

15                   We all heard what he said here.

16                   MR. LAMBERT:  We heard a series  
17                   of leading questions.

18                   What I'd like to do is have the  
19                   witness use his own words to describe  
20                   the facts.

21                   MR. CUNNINGHAM:  That's fine.

22                   We think we've had that, but go  
23                   ahead.

24                   MR. LAMBERT:  We'll see.

25                   MR. CUNNINGHAM:  Okay.

1 BY MR. LAMBERT:

2 Q What was the first that you learned? What was the  
3 beginning of the story?

4 A Okay. It was sometime, I believe, during the  
5 midnight shift -- I think that's the shift I was  
6 working at the time -- that I was told by  
7 someone -- I'm not sure whom -- that an accident  
8 had occurred on track 69.

9 Q Was this information of the sort that would  
10 typically be brought to your attention because of  
11 knowing it was part of your job or was it simply  
12 gossip?

13 A My job had nothing to do with the west end, which  
14 is where track 69 is.

15 My job at that time involved preparing the  
16 hump list. My coworker was the classification  
17 clerk who marked on the waybill the grouping and  
18 the track it was to go to and that sort of thing.

19 Q Was it something that your co-clerk would need to  
20 know or be expected to know as part of his job and  
21 nothing that you would be required to know as part  
22 of your job?

23 A We wouldn't be required to be told about it due to  
24 our jobs. Like a yardmaster or a trainmaster might  
25 need to be notified. We didn't need to be

1 notified.

2 Q What happened next?

3 A I don't know exactly what happened. All I know  
4 is I was told that there had been an accident on  
5 track 69 and that a switchman had been coupling  
6 up the tracks and -- to prepare those tracks for  
7 an outbound train that had come across it. And he  
8 seen an accident had occurred and had run from the  
9 area.

10 That's all I recall about that part.

11 Q Was carbon tetrachloride mentioned at the time that  
12 you first heard of the incident?

13 A There was discussion about what was in the car.  
14 And I don't know if I was told that it was carbon  
15 tetrachloride or if, when I looked at the waybill,  
16 I saw it was carbon tetrachloride.

17 And I, you know -- I didn't know what carbon  
18 tetrachloride was, and I really don't know that  
19 much about it today.

20 Q What happened next after that?

21 You referred to looking at the waybill; you  
22 referred to seeing the car or seeing a car with a  
23 hole in it.

24 What was the next step?

25 A I saw the car with the hole in it at some

1 subsequent date. I don't know if it was one, two,  
2 three, four days later.

3 But I saw the tank car being humped. Because  
4 after that incident, well, then the car apparently  
5 was taken to the repair track.

6 And every so many days they would hump the  
7 repair track. The cars that were now okayed, ready  
8 to go, would be switched out to their track so they  
9 could make an outbound train and be on their way.

10 The others were returned to the repair track.  
11 And that one stayed for a while.

12 Q Could you just give us a little bit more detail  
13 about that. Because we're creating a record that  
14 is going to be read by, perhaps, people who won't  
15 have much of an understanding of how the yard  
16 operated.

17 When you're talking about humping in  
18 connection with the repair track, would you put  
19 that into layman's terms?

20 A By humping cars?

21 Q What was happening to the car.

22 A Okay. The cars come into a receiving yard, and  
23 that's located at the east end of the yard.

24 And then most of those tracks funnel into the  
25 single track, which puts them on a mound of earth



1           which is known as the hump.

2           And there is the hump yard office that I  
3           worked in on one side of that track. And on top  
4           of that building was a tower which, at one level,  
5           had the yardmaster at the highest level, had the  
6           trainmaster.

7           On the other side of the hump track, the  
8           track going across that mound of earth, was a  
9           small building which was used by the switchmen.  
10          And they had the switches by which we could  
11          automatically designate which track a car that was  
12          going down the hill -- which track that would go  
13          into.

14          Q   As it went into what was called the classification  
15          yard?

16          A   Right, the classification yard.

17          Q   Now, if there had been an incident involving a tank  
18          car on track 69, and if the car needed to be  
19          repaired, what, under the normal practice, would  
20          have happened to that car? Where would it have  
21          gone?

22          A   I would expect it to go to the repair track, which  
23          is the track, one or more tracks, that would hold  
24          the cars, rail cars, that were deemed not fit for  
25          travel.

1 Q Could it get there without going over the hump?

2 A Yes.

3 Q Now, when you talked about seeing a car with a  
4 hole in it going over the hump -- let me -- I  
5 don't want to do what I accused Mr. Cunningham of  
6 doing.

7 Did you see a car with a hole in it going  
8 over the hump?

9 A Yes.

10 Q If there had been an incident on track 69, and if  
11 the car had gone to the repair shop, how is it that  
12 you would see a car with -- that car with a hole in  
13 it going over the hump?

14 A Okay. Our yard, class yard, and the hump in  
15 between (indicating). And out at the west end, in  
16 the area of the classification yard, is the repair  
17 track, okay?

18 So there are other tracks by which, as  
19 they're going to hump them, just -- usually just  
20 have an engine bring them around, bypass the hump,  
21 and then shove them over. Then they'd go back west  
22 again.

23 Q We can look at the map to do this, but I think we  
24 can do it in words too.

25 The classification yard is to the west of the

1 hump?

2 A Yes.

3 Q And the repair track is also to the west of the  
4 hump?

5 A Yes.

6 Q So if a car has been damaged in the classification  
7 yard and then gone to the repair shop --

8 A Yes.

9 Q -- the car repair shop, in order to get back over  
10 the hump again, it would have had to travel to the  
11 east?

12 A Yes.

13 Q And then been turned around, and then, going over  
14 the hump, it would be going west again?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Now, when you testified before that you saw a car  
19 with a hole in it going over the hump, can you  
20 pinpoint the time in relationship to when you heard  
21 of this alleged incident any closer than within  
22 two, three, four, days?

23 I can't remember what number of days. But  
24 was it within some period of days thereafter?

25 A Repeat that, please.

1 Q How long after you heard of the incident occurring  
2 on track 69 did you see the car with the hole in  
3 it?

4 A I don't know if it was, you know, two to three  
5 days; or it could have even been the next day, but  
6 I doubt it.

7 Q It had a hole in it at the time that you saw it?

8 A Yes.

9 Q How big was the hole?

10 A Large, very large.

11 Q Can you give us some idea of how large is "very  
12 large"?

13 A Oh, if memory serves me correctly, I'd say it was  
14 probably about that large (indicating).

15 Q It was a round-shaped hole, roughly round-shaped?

16 A It was like a giant fist had punched through  
17 (indicating).

18 Q When you held your hands up before, were they about  
19 two to three feet apart?

20 A I'd say they are (indicating).

21 Q Okay. How high off the ground was the hole?

22 A I don't know.

23 But, with a tank car, you have the frame and  
24 you have this enclosed cylinder sitting on top of  
25 that.

1                   And it was in the -- I wouldn't say the  
2                   middle, but somewhat below the middle to lower part  
3                   of the tank car that the hole was in, the west end  
4                   of it.

5           Q       Where was it in relationship to the couple that  
6                   would link one car to the next?

7           A       Well, the hole was, as far as from left to right,  
8                   it was pretty well centered.

9                   It would be in keeping, as far as I'm  
10                  concerned, with the -- how it would line up with  
11                  the knuckle of another car.

12                  I thought that was plausible. Except it had  
13                  to be some tremendous impact.

14          Q       So the hole was towards the center of the cylinder;  
15                   is that correct? In other words, it wasn't to the  
16                   left or the right?

17          A       Right.

18          Q       Let me give you back your affidavit.

19                  Under your signature on the third page, it  
20                  asks you to draw a cross-section of the back of the  
21                  tank car and show where the hole was.

22          A       That being the bottom of it (indicating), my  
23                   estimation would be that it was, like, in this area  
24                   right here (indicating).

25          Q       Okay. Where is the couple that -- the hole is the

1 round thing that you've just drawn.

2 Where is the couple?

3 A Well, the coupling on that car, I would think,  
4 would be down in this area (indicating).

5 Q Okay. So it was above the couple, above the  
6 knuckle?

7 A Yes.

8 Q Was it in the west or the east end of the tank car,  
9 the hole?

10 A The hole was in the west end.

11 Q So that would mean that if the -- the theory that  
12 the puncture was caused by the tank car running  
13 into a knuckle, that means the exposed knuckle  
14 would have been on a car that had already been  
15 humped.

16 And then the front part of the tank car that  
17 had the hypothetical carbon tetrachloride in it  
18 would have hit that.

19 MR. CUNNINGHAM: Objection.

20 That's a question?

21 BY MR. LAMBERT:

22 Q Did you understand it?

23 A I understand that.

24 And the speculation was that it had struck  
25 the knuckle of the car that was already on the

1 track.

2 Q The location of the hole that you saw was  
3 consistent with that theory?

4 A As far as location left to right.

5 The fact that it was so high above -- I  
6 can't tell you how high -- but so high above a  
7 knuckle, you know, further speculation was that it  
8 had to be a tremendous impact for the car to  
9 (indicating) apparently hit and then go up and  
10 drive forward, then still get it, and then come  
11 back down.

12 MR. CUNNINGHAM: Move to strike  
13 the answer. That is based on  
14 speculation.

15 BY MR. LAMBERT:

16 Q You said that the car that you saw with the hole in  
17 it was gray; is that right?

18 A Gray or silver. It was gray compared to those that  
19 are black, let's put it that way.

20 Q You also said that you looked at a waybill; is that  
21 correct?

22 A Yes.

23 Q Did you look at the waybill before or after you saw  
24 the car?

25 A I saw the waybill the night of the incident and

1 prior to ever seeing the car.

2 Q How did you happen to look at the waybill?

3 A I went out to the bill rack and looked at it.

4 Q How did you know which waybill to look at?

5 A I was told that tank cars that were on track 69 had  
6 been involved in the accident.

7 Q How did that help you select a particular waybill  
8 to look at?

9 A Because I was told that there were three tank cars  
10 that weighed in excess of 200,000 pounds. And I  
11 looked, and there were those three tank cars in  
12 that batch.

13 Q For track 69?

14 A Right.

15 Q What information is on a waybill? What information  
16 was on waybills of the sort that you looked at in  
17 1969 -- or looked at at this time?

18 A Well, in general, waybills -- to describe a  
19 waybill, if you were to take an 8 1/2 by 11 sheet  
20 of paper and fold it longways, like so  
21 (indicating), well, then the front of the waybill  
22 would have the car number on it, the routing, who  
23 it was going to, and what was in it.

24 Whereas the rear of the waybill would have  
25 where the car was -- had originated, what company



1           was shipping it, and shipping charges, weights,  
2           things such as that.

3           Q    When you went to the rack that night to look at the  
4               waybills, did you look at the waybills -- how did  
5               you decide which waybills to look at?

6           A    Based on the weight.

7                       And perhaps -- and, for all I know or don't  
8               know, they may have been the only tank cars in the  
9               batch.

10          Q    What information --

11                       MR. CUNNINGHAM:  Objection to  
12               anything he doesn't know about.

13          BY MR. LAMBERT:

14          Q    What information did you see on the waybills with  
15               respect to tank cars on track 69 that night?

16          A    What did I see?

17          Q    What information did you see on the waybills?

18          A    At least one of those, the one that I later saw  
19               that had the hole in it, one or more of those three  
20               had carbon tetrachloride in it.

21                       And they were routed to Streator, to the  
22               Santa Fe Railroad.

23          Q    Could you explain the routing part of your answer?

24          A    On the waybills, the routing would include  
25               information such as our railroad's name and perhaps

1 followed by Chicago, C & NW, which is the name of  
2 another railroad. And we would know, then, to send  
3 that car to Chicago to be handed over to the C & NW  
4 railroad.

5 In this particular case, it was from our  
6 railroad to Streator, which is Streator, Illinois,  
7 S-t-r-e-a-t-o-r, to be given to the ATSF, more  
8 commonly known as the Santa Fe Railroad.

9 Q Had you, that night, heard any prior reference to  
10 Streator, Illinois in connection with this  
11 incident?

12 A No. It's just that track 69 was the Streator Santa  
13 Fe track.

14 Q Is there information on the waybill that permits  
15 you to link the information on the waybill with a  
16 particular car?

17 A The car number.

18 Q Would you explain what a car number is for the  
19 uninitiated who don't know about railroads?

20 A Just like a taxicab may have its own information  
21 number on it, or you may see a semitrailer going  
22 down the street with a number on it, or a police  
23 car has its car number on it.

24 All railroad cars have a number to identify  
25 them that begins with the name of the railroad

1           which owns the car followed by a series of numbers.

2                   I believe the most numbers I've ever seen was  
3           six.

4           Q    When you looked at the waybills, did you see a car  
5           number for a car or cars that contained carbon  
6           tetrachloride?

7           A    Yes, I did.

8           Q    When, in relationship to the time that you looked  
9           at the waybills, was it that you saw the car with  
10          the hole in it?

11          A    I saw the waybill the night of the incident.

12                   Whereas I don't know how long after that that  
13          I saw -- it was during another shift that I was  
14          working on a subsequent day. I don't know if it  
15          was one, two, three, four days later that I saw the  
16          tank car.

17          Q    Did the tank car that you saw have a number on it?

18          A    Yes, it did.

19          Q    Did that number bear any relationship to any of the  
20          numbers that you saw on the waybills the night of  
21          the alleged incident?

22          A    It matched up with one of those.

23          Q    Did it match up with one of those that contained  
24          carbon tetrachloride?

25          A    Yes.

1 Q Could you explain the procedure for the preparation  
2 of waybills; who prepared them?

3 A Waybills are generally, to my knowledge, are  
4 prepared by clerks in the freight offices of the  
5 railroad.

6 During the one year that I was away from the  
7 Elkhart yard, one of my primary responsibilities  
8 was to go to the various freight offices and train  
9 those clerks on the preparation of the waybills in  
10 such a way that they could be entered into the  
11 computer, which was a new thing at the time.

12 And so it would be the clerks in the freight  
13 offices who would prepare those.

14 Q With respect to the particular waybill that dealt  
15 with the tanker that contained carbon  
16 tetrachloride, where, physically, was that waybill  
17 prepared?

18 A I could only assume that it was prepared at the  
19 point of origin. And I don't know where that was.

20 Q How does it get to Elkhart?

21 A The conductor of the trains -- at least in those  
22 days, the conductor of the trains would have the  
23 waybills in a stack with rubber bands around them  
24 and so on.

25 He would have a waybill or some kind of card

1           for every car in his train. And then when he'd  
2           get to his destination, he would hand those over  
3           to the clerks.

4           Because then, as the cars were distributed  
5           to make up other trains, then the waybill would  
6           accompany the car, and more stacks would be made  
7           up.

8           Q    So in the case of a tank coming into Elkhart from  
9           the East, there would be a conductor who would have  
10          waybills with him that he would provide to the  
11          Elkhart people?

12          A    Yes.

13          Q    Was this the normal practice that was followed at  
14          the time that you worked at the Elkhart yard in the  
15          1960s?

16          A    Yes.

17          Q    And am I correct in understanding that the waybill  
18          was prepared by the buyer on behalf of the company  
19          that was shipping the material that was in the  
20          car?

21                In other words, it was prepared by someone  
22          who knew what was in it?

23          A    I really don't know that, but I would expect that  
24          to be the case.

25          Q    That was the operating assumption that railroads

1           made at the time; is that correct?

2           A    I mean if it said coal, you expected to see coal  
3           there, not corn.

4           Q    Okay. Under the procedures that were in effect  
5           back in the late 1960s, would Elkhart have  
6           retained a copy of the waybill for that particular  
7           shipment, or would that waybill have moved on with  
8           the car?

9           A    Normally, there would be no need to keep a copy of  
10          a waybill. And I don't know that any were kept.

11          Q    When you worked there in the '60s, was there any  
12          procedure that you were aware of that pertained to  
13          maintaining some sort of record of incidents  
14          involving the spillage of either derailments or  
15          spillage of cars of the sort that this incident may  
16          have involved?

17          A    I don't know about what procedure may have been in  
18          effect.

19                You know, I just vaguely recall, I think,  
20          that there was a telephone number in case you had a  
21          question or an emergency or whatever involving  
22          chemicals to call this number. Perhaps that was  
23          posted.

24                But what I, as an employee in my position,  
25          would have been expected to have done is, if I had

1 a problem -- which I'm not probably going to have  
2 one in the office -- but just notify the yardmaster  
3 or trainmaster, and they would take care of that  
4 kind of thing.

5 So they would have the knowledge what the  
6 procedures should be.

7 Q You mentioned that you were privy to discussions  
8 that involved speculation as to how this incident  
9 could have occurred; is that correct?

10 MR. CUNNINGHAM: Objection to  
11 anything that may call for  
12 speculation, Mr. Brewton.

13 MR. LAMBERT: Well, let me just  
14 take another stab at the question  
15 here.

16 Q Did you testify that you were privy to discussions  
17 that involved how this incident might have  
18 occurred?

19 A Right. I took part in such discussions.

20 Q I take it you don't remember the names of any of  
21 the people who participated?

22 A Only my coworker that night, David Cole, who -- I  
23 don't know directly, but someone told me that he's  
24 deceased.

25 Q Do you remember, if not the names, at least the

1 positions of any of the other people who  
2 participated in the discussion with you?

3 A No.

4 Q You said that if you were going to try to work  
5 back through files to try to ascertain when this  
6 incident occurred, you would start with 1969?

7 A Yes.

8 Q Why so?

9 A Because the supervisor of the clerical staff,  
10 who was there at the time when I left in June of  
11 '69, was the supervisor at the time that this  
12 occurred. I can't tell you what his name is. But  
13 he was the supervisor of yard procedures at that  
14 time.

15 Q Okay.

16 A That was his title, supervisor of yard procedures.

17 Q Was there anything going on in your life or going  
18 on in the world at the time that allows you to fix  
19 the date of this incident any firmer than you've  
20 fixed it so far?

21 A No.

22 Q At the time that you were there, were any records  
23 maintained that you know of that one could have  
24 searched or could search for some mention of this  
25 incident?



1           A    I don't know what records the railroad commonly  
2               retained.

3                     You know, there was a clerk, I think, who  
4               dealt primarily with the repair track, trying to  
5               keep those -- that straightened out from the  
6               clerical view.

7                     And then and I don't know what records they  
8               might have down there.

9           Q    You mentioned that Streator, Illinois -- strike  
10               that.

11                    You mentioned that track 69 was used for  
12               Streator, Illinois cars?

13           A    Right. Streator Santa Fe.

14           Q    Streator Santa Fe.

15                    Was there any other track besides 69 that was  
16               used for Streator Santa Fe cars?

17           A    Not normally.

18                    It's not that you couldn't use another track  
19               for a particular grouping. It's just that normally  
20               track 1 was for a particular -- and track 2, track  
21               3, track 4, and so on.

22                    And there were eight or nine tracks to a  
23               group. You'd have eight or nine groups -- you had  
24               72 tracks.

25                    So, perhaps, if you had a lot of Streator

1           Santa Fes or C & NWs or whatever they are, Rock  
2           Islands, if you had a lot of those, and maybe  
3           another track was really virtually unused, go ahead  
4           and use it now. Because you're going to soon get  
5           things back to their normal situation.

6                        So I suppose that they could have used  
7           another track at some time, but normally not.

8           Q   Normally it would be track 69?

9           A   Right. Normally that would give them ample room to  
10          work with.

11          Q   I'm not sure if I asked you this question or not,  
12          but when you looked at the waybill the night of the  
13          incident, the waybill referred to Streater Santa  
14          Fe?

15          A   Yes.

16          Q   Do you ever recall seeing a letter from Penn  
17          Central to a company associated with the car  
18          involved in this incident?

19          A   I saw a letter within a couple of weeks of the  
20          incident that was to the same company. Now, I  
21          don't know if it was as a direct result of this  
22          incident. I thought that it probably was.

23                        But it was to that same company, telling them  
24          that they needed to change the beveling on the  
25          wheels in some manner because -- to make them be

1           able to be retarded more easily.

2           Q   Why is it important that they be retarded at some  
3           particular level or some particular degree?

4           A   It's my understanding at the time that, as the cars  
5           were cut loose to roll down that hump under their  
6           own power, there were retarders along the way.  
7           They had a master retarder; then they had other  
8           retarders I guess.

9                       And the retarders would squeeze the wheels of  
10           the car as it was rolling down the hump so that it  
11           would slow the car sufficiently so that by the time  
12           it got to its destination, it would hit any other  
13           car that was on the track at no more than a couple  
14           miles an hour.

15                    That would take into account weather  
16           conditions, you know, wind, direction of wind,  
17           speed of wind, the weight of the car, which track  
18           it was going to, how many cars were already on that  
19           track, and that sort of thing.

20                    So they would know whether they needed to  
21           retard that more or less, depending upon how far it  
22           would travel before it would come in contact with  
23           another car.

24           Q   What would happen if the car was not retarded to  
25           the speeds that were typically used?

1           A    In my opinion -- because that was really outside  
2                   of my area. But my opinion is it would be a  
3                   matter of -- that it would strike at greater than  
4                   two miles an hour and then more readily risk  
5                   damage to the contents of the car or perhaps the  
6                   car itself.

7                           MR. CUNNINGHAM: Move to strike  
8                   the answer. It pertains to opinions.

9           BY MR. LAMBERT:

10          Q    Back to the letter that you saw; who sent the  
11               letter?

12          A    I don't remember.

13          Q    I don't mean individually, but was it on a  
14               letterhead?

15          A    It was from our railroad to that company, but I  
16               don't know who sent it.

17                   My guess would be it was the terminal  
18               superintendent or the trainmaster, but I don't  
19               know.

20                           MR. CUNNINGHAM: Move to strike  
21               the answer. It obviously contains  
22               guessing.

23                           MR. JAFFE: I would appreciate  
24               it if you would let him answer before  
25               you object.

1 MR. LAMBERT: Why don't we have  
2 the question and answer read.

3 (Record read.)

4 MR. CUNNINGHAM: Let me just --  
5 maybe this will shorten the process.

6 Claude, when you are testifying,  
7 you can't guess. You've got to only  
8 testify as to things you know, okay?  
9 Maybe --

10 MR. LAMBERT: I don't mean to  
11 prolong this, but it was on letterhead  
12 of Penn Central?

13 MR. CUNNINGHAM: He said he  
14 didn't know.

15 MR. LAMBERT: No, he didn't  
16 say -- he said he knew whose  
17 letterhead it was on. He didn't know  
18 who signed the letter.

19 MR. JAFFE: Why don't we --

20 MR. LAMBERT: Let's ask him the  
21 question: Was the letter written on  
22 letterhead?

23 THE WITNESS: I really don't  
24 know.

25 I recall seeing a letter.

1                   Whether it was due to a letterhead or  
2                   who signed it or whatever, I knew it  
3                   was from our railroad.

4                   And I always get this mixed up,  
5                   whether it's Penn Central or Conrail.

6                   MR. LAMBERT: If it was before  
7                   1976, it was not Conrail's.

8                   MR. CUNNINGHAM: That's testimony.

9           A     So, anyhow, it was sent from our company or a  
10           representative of our company to the company that  
11           had that tank car.

12   BY MR. LAMBERT:

13   Q     It was the same company whose name appeared on the  
14           waybill?

15   A     Right. As far as the prefix to the car.

16   Q     Did it refer to the incident?

17   A     No, it didn't.

18   Q     What did it say with respect to the wheels of the  
19           cars?

20   A     All I recall is that there was something mentioned  
21           about wanting them to change the beveling of the  
22           wheels so they could -- it could be retarded more  
23           readily or something like that.

24                   MR. LAMBERT: Thank you. I  
25           have nothing further.

1 MR. JAFFE: If you don't mind  
2 just giving us one moment.

3 (Recess taken.)

4 CROSS-EXAMINATION

5 BY MR. LINDLAND:

6 Q Mr. Brewton, my name is Kurt Lindland. I'm an  
7 attorney with the United States Environmental  
8 Protection Agency. I just have a few questions for  
9 you.

10 First of all, you referred to this tank car,  
11 and it's in your affidavit you referred to a tank  
12 car as weighing 200,000 pounds, according to the  
13 waybill.

14 A Or more.

15 Q Or more. How much does an empty tank car weigh; do  
16 you know?

17 A No, I don't. I could guess is all.

18 Q Does it weigh more or less than 200,000 pounds?

19 A Less.

20 Q Does it weigh half as much or approximately how  
21 much does it weigh; do you think?

22 A I think -- I would guess that it would weigh around  
23 60- or 70-some thousand pounds.

24 Q 60- or 70,000?

25 A That's just a guess.

1 Q And the weight that was on the waybill, that said  
2 200,000 pounds, correct?

3 A Or more. I don't know what the specific amount  
4 was. I know it was more.

5 Q Was that car weighed before or after the spill?

6 A It was weighed after, I'm sure of.

7 And when I say more, that's based upon what  
8 the waybill indicated. Somebody had typed it on  
9 the waybill at some earlier place; probably at the  
10 place of origin.

11 Q So the weight is recorded on the waybill at the  
12 place of origin, right?

13 A Right. That one was, would be my guess.

14 Q And that was recorded at 200,000 pounds?

15 A No. Let's start again.

16 On the back of the waybill, you have  
17 information concerning the origin of the car. And  
18 that sometimes includes the charges for shipping  
19 and it sometimes includes the weight.

20 And with some commodities, I would think that  
21 the weight has something to do with what the  
22 charges are.

23 In this particular case, I know that the  
24 weight was in excess of 200,000 pounds. But  
25 whether it was 299,000 or whether it was 219,000



1           pounds, I don't know.

2                       But that was already recorded on the back of  
3           the waybill by whoever typed it up.

4           Q    So prior to coming into the yard, that car weighed  
5                more than 200,000 pounds?

6           A    Yes.

7           Q    You mentioned that your job was basically confined  
8                to the building where the clerk -- a department  
9                was?

10          A    Yes.

11          Q    Was your job to check for spills?

12          A    No.

13          Q    Was it your job to stand out by the tracks and see  
14                that the cars are coupled properly?

15          A    No.

16          Q    So there would be no reason for you to be out on  
17                the tracks to check for spills or check that the  
18                cars are properly coupled?

19          A    No.

20          Q    Was there ever a time when you worked at the rail  
21                yard that you witnessed another accident?

22          A    Yes.

23          Q    And what accident was that?

24          A    That was some hoppers jumped the track, hopper  
25                cars. Those are the ones that you normally would

1 expect to see coal or some of the materials such as  
2 that. And they jumped the track.

3 Q How did they jump the track; do you know?

4 A I don't know what happened. But someone yelled  
5 "Look," and it was sort of like in slow motion.  
6 You saw them kind of doing their thing  
7 (indicating).

8 Q "Doing their thing," you mean --

9 A Meaning --

10 Q -- coming off the track?

11 A Leaving the tracks and kind of going this way and  
12 that way (indicating).

13 Q Now, does this happen on a regular basis?

14 A No.

15 Q But approximately how often would you say cars  
16 either jump the tracks or otherwise are in  
17 accidents out there?

18 A I really couldn't answer that.

19 As far as major accidents, those were very  
20 few and far between. You know, I can think of one  
21 fatality in the yard while I was there. There may  
22 have been another one, but that's the only one I  
23 can remember.

24 And every now and then you'd have a car that  
25 would jump -- just be off the track. It was not a

1 big thing; not a lot of damage.

2 But as far as tearing anything up or blocking  
3 things for a period of time, that was not often.

4 Very seldom.

5 Q When you say "not a lot of damage," just so we know  
6 what a lot of damage is, would you say that this  
7 accident that we're referring to with the tank car  
8 and the hole would be a lot of damage?

9 MR. CUNNINGHAM: Objection,  
10 unless we can have some definition as  
11 to "a lot of damage."

12 BY MR. LINDLAND:

13 Q In your opinion, was there a lot of damage?

14 A There was severe damage to the car. It couldn't be  
15 utilized until it was repaired. I don't know how  
16 much that would cost.

17 But what I was referring to is the car that  
18 simply jumped the track. And it's just simply a  
19 matter of putting it back on the track and it  
20 goes on its way, compared to a car that maybe the  
21 wheels get knocked off away from the rest of the  
22 car and tear up ties and rail and that sort of  
23 thing.

24 To me, that's a lot of damage.

25 Q Okay. I mean it sounds like you've heard of a lot

1 of accidents out there. Not a lot, but you've  
2 heard of other accidents other than this one; that  
3 is the car -- or the tanker car that has a hole in  
4 it.

5 A That was unique in itself.

6 But as far as a car being off the rail, that  
7 would not be so remarkable. But I wouldn't say  
8 that there was a lot of accidents out there.

9 Q Was it unusual for you to hear about this car that  
10 collided with the other one and spilled carbon  
11 tetrachloride?

12 A I don't think that was unusual --

13 Q Because it was --

14 A -- to be told or --

15 Q Why don't you think that's unusual?

16 A Something that's going on in the yard, just like  
17 with any other gossip or what's happening in our  
18 world, you know, that was part of it.

19 Q When you saw that car being humped again that had  
20 the hole in it, would you say that that car was fit  
21 for traveling with the hole in it?

22 A I wouldn't have any background to be able to  
23 determine that.

24 Q Have you ever seen --

25 A I saw the car rolling across on the tracks well

1           enough.

2           I would say that there had to be some concern  
3           about the contents that were remaining in the  
4           car --

5       Q   Did you see --

6       A   -- before shipment.

7       Q   Did you see any contents in that car?

8       A   No.

9       Q   Have you ever seen a car that was being used for  
10           transportation that came into the yard or that was  
11           going out of the yard with a hole like that in it?

12      A   No.

13      Q   So it's not the normal practice to use cars with  
14           holes in them?

15      A   No.

16      Q   Do you know of anyone else who may have heard about  
17           this spill?

18      A   My coworker that night. I'm sure there are a  
19           number of people. I don't have any names, but I'm  
20           sure there are a number of people that are aware of  
21           this particular incident.

22      Q   You mentioned that the yardmaster may have  
23           broadcast this over a loudspeaker.

24                   Where would that loudspeaker have carried?

25                   In other words, what parts of the yard would have

1           been hooked up to that system?

2           A    We had, in our small office, a speaker by which we  
3           could talk to the yardmaster.

4                   And there were others of those -- actually,  
5           there were speakers throughout the yard where a  
6           switchman could indicate that they wanted to talk  
7           to the yardmaster.

8                   But this was a -- this was not part of that  
9           system. But there were a few of those speakers.

10          Q    Did you hear of any sort of contingency plans or  
11           any actions that were taken because of this spill;  
12           for example, the yardmaster discussing --

13          A    No.

14          Q    -- how they were going to reroute or --

15          A    No.

16          Q    -- anything like that?

17                   Did you speak to anyone prior to this  
18           deposition?

19          A    About the deposition?

20          Q    About this deposition, right.

21          A    Oh, sure.

22          Q    Who did you speak to?

23          A    My secretary, my wife, my brother, the chief's  
24           secretary.

25          Q    Did you speak to anybody sitting at this table?

1           A    I've spoken to Mr. Cunningham before, and Annette  
2                   has been present before.

3           Q    And what was the substance of your conversation  
4                   with Mr. Cunningham?

5           A    He took a sworn statement.

6                   Actually, I had been subpoenaed at one time  
7                   or another to appear at another attorney's office  
8                   in regards -- I think it was maybe for, to my way  
9                   of thinking, a deposition. Perhaps not.

10                  In any case, that didn't take place. And it  
11                  was not all that long after that I was contacted by  
12                  Mr. Cunningham's office.

13                  And I just kind of thought, Well, okay. It's  
14                  still in regards to the other. And rather than  
15                  make them jump through the hoop of getting another  
16                  subpoena, sure, I'll be there.

17                  Because I've just made it a practice within  
18                  my career not to appear without a subpoena. I  
19                  don't mind appearing, but it requires a subpoena.

20           Q    Was your discussion then -- at your sworn statement  
21                   with Mr. Cunningham, was the substance of that  
22                   related to this spill?

23           A    Yes.

24           Q    And were the questions he asked then similar to the  
25                   ones he asked today?

1 A Yes.

2 Q Were they identical?

3 A I don't know how you would refer to identical --

4 Q Did he ask you -- okay.

5 A Except being exactly the same.

6 Q Did he ask you anything then that he didn't ask you  
7 today?

8 A Not that I recall.

9 In fact, I think he's got the copy of it  
10 here. I think I saw it.

11 Q What exactly is a keypunch operator at the rail  
12 yard?

13 A Remember the IBM cards that had the little holes in  
14 them?

15 Q Uh-huh.

16 A Okay. Those cards were used to transmit the data  
17 from one location to another. And so inside that  
18 waybill was an IBM card that had a card number,  
19 an abbreviation of the company name of the place  
20 where the car was going to and of the contents and  
21 so on.

22 And so sometimes that information was wrong  
23 in some way. Maybe somebody out East didn't know  
24 that, you know, we don't connect with Santa Fe  
25 Railroad at Chicago. We're going to connect with



1           them at Streator.

2                   So I would make up another card and change it  
3           to Streator Santa Fe. Or maybe it was incorrect in  
4           some way; I would correct it.

5       Q   How is that related to the hump list?

6       A   Okay. That that I just described was one job that  
7           I primarily did.

8                   The hump list job was where you had the  
9           classification clerk marking on the waybill the  
10          track and grouping and so on that was supposed to  
11          be indicated on the hump list.

12                  Then, in my job, I just merely keypunched  
13          that and made IBM cards for each car showing the  
14          car number and so on, made a tape, transmitted that  
15          tape to that little building that had the switchman  
16          in it.

17                  The yardmaster got a copy, I think the  
18          trainmaster probably got a copy. So when they'd  
19          say, Okay, hump track 12, then they'd bring 12 up  
20          and they'd have that list to go by to know that  
21          this car goes to track 12 and this car goes to 44  
22          and this car goes to 36. And that's what they  
23          would switch off of.

24       Q   Would they ever arrange those cars such that a type  
25          of material would be lined up together; in other

1 words, send three tanker cars together and then put  
2 the hopper cars kind of in a segment? Or was it  
3 more sporadic?

4 A It was more sporadic. You mean as far as the  
5 origin and so on?

6 Q Right.

7 A It was more sporadic. Because they didn't usually  
8 care -- I don't think they usually cared what kind  
9 of car was there. It's just a matter of the  
10 grouping.

11 Now, the only time I know of that it  
12 mattered, maybe, what kind of car was where in a  
13 train was perhaps they'd want to keep something  
14 that was particularly dangerous away from the crew,  
15 at the head or the rear end of the train, and put  
16 it up further in so if anything happened, it was  
17 away from the crew.

18 Q How long are those records kept?

19 By "those records," I'm referring to the hump  
20 list.

21 A I don't know if they were kept at all.

22 Q Do you know who does?

23 A No. Well, I would think that the trainmaster or  
24 yardmaster would know that.

25 I would imagine that the humping office has

1           some kind of list yet today. They would be able to  
2           tell you if they keep any of that stuff.

3           Q    I'd like to refer to your affidavit that's been  
4           marked as Defendant's Exhibit No. 1, I believe.  
5           I'm handing you that exhibit.

6                    Have you seen this document before?

7           A    Yes.

8           Q    Could you please describe that document?

9           A    It's a -- it depicts the Conrail yard in Elkhart,  
10          Indiana.

11          Q    Is it a map of the yard?

12          A    Yes.

13          Q    Would you please place an "X" with this blue pen  
14          that I'm handing you approximately where the spill  
15          occurred.

16          A    Okay. I really don't know where on track 69 the  
17          spill occurred.

18                   And I'm not -- seems like I tried to count  
19          these up before, and maybe we did this when we  
20          talked before. I don't know if this map is really  
21          exact.

22          Q    You don't need to count to see if there's 69 tracks  
23          on there. But, roughly, whereabouts did --

24          A    What I'm thinking is that with No. 2 being the hump  
25          tower --

1 Q Uh-huh.

2 A Okay? Knowing how the tracks were numbered, then I  
3 would think that track 69 would have to be  
4 approximately right about here (indicating). But I  
5 don't quite buy that.

6 But, anyhow, it's in this location  
7 (indicating).

8 Q But the exact location of the spill you're not sure  
9 of?

10 A No, I don't know where it was.

11 Q How long does that track run; does that basically  
12 run to the end of the yard or --

13 A No. It runs -- no. This is just about lined up  
14 just about right. I'd say between three and four  
15 thousand feet, looking at this map.

16 Q Okay. That's based on the scale on the map?

17 A Right.

18 (Mr. Jaffe and Mr. Lindland confer.)

19 Q How do you know that's track 69 as opposed to  
20 another track?

21 A Okay. As you can see, there are -- coming down off  
22 the hump, you have a group of tracks (indicating).

23 Q I see that.

24 A See? This is a group; that's a group (indicating),  
25 okay?

1           There were eight or nine tracks having eight  
2           or nine -- either eight or nine groups -- excuse  
3           me. Eight or nine groups having each eight or nine  
4           tracks, sets of tracks. So that makes your 72  
5           tracks.

6           So that's why I was trying to count, like,  
7           maybe one, two, three, four, five, six, seven,  
8           eight.

9           Now, if there were nine tracks here, then  
10          that would be track 72. If there were nine  
11          groups --

12         Q   Right.

13         A   -- that would be track 72. But you don't even see  
14          that there are eight or nine tracks in any of these  
15          groups.

16         Q   But the tracks are numbered sequentially starting  
17          with the north end of the classification yard going  
18          south?

19         A   This would be 1 through 72 (indicating), yes.

20         Q   Okay. Again, when you saw the tank car being  
21          humped after it had the hole in it, you don't  
22          remember seeing any material in that tank car?

23         A   I would not have been -- no, I did not see any  
24          material in the car. I wouldn't have been in that  
25          position.

1 Q If there was material still in the tank car, what  
2 would have happened to you it; do you know?

3 A No.

4 Q So your direct knowledge is that there was a car  
5 that weighed 200,000 pounds that had carbon  
6 tetrachloride in it that later had a hole in it; is  
7 that true?

8 A My knowledge is based upon the data on the waybill.

9 Q Right.

10 A Not by what I otherwise observed.

11 I mean the waybill said that that car had  
12 200-some thousand pounds of carbon tetrachloride in  
13 it.

14 Q Was there ever a time when a car would have more  
15 weight in it than a waybill said it would?

16 A That wouldn't surprise me. I can think of some  
17 cases where the weight could change.

18 Q And what cases are you thinking of?

19 A Well, first of all, you could have estimates.  
20 Perhaps -- here we go with more speculation.

21 Perhaps it would be an agreement between the  
22 companies that we know that the car is going to be  
23 approximately this, and this is what we're going to  
24 charge per car. So that weight wouldn't have to be  
25 exact.

1                   Or perhaps you could have a carload of grain  
2                   or flour or anything like that and have that  
3                   spilling out onto the ground. And that was not  
4                   uncommon.

5           Q    Would that normally occur with a tanker full of  
6               carbon tetrachloride?

7           A    No. I don't know about tank cars. I wouldn't -- I  
8               would think it would be more common with these  
9               grain cars. That's what I mean. So where you  
10              would have less weight than what the waybill  
11              showed.

12          Q    Okay.

13          A    Or if you have a piece of something fall off, then  
14               you could --

15          Q    Is it likely that a tank car would -- the weight of  
16               the tank car would be off 140,000 pounds from what  
17               the waybill said?

18          A    I wouldn't expect that to be the case.

19                   I didn't really often weigh them or anything  
20               or even make note of that one way or the other.

21          Q    Do you know who the yardmaster was during the time  
22               you were there between 1966 and 1969?

23          A    There were several of them: Joe Mayo, Dave  
24               Garman --

25          Q    Is Joe Mayo still in the Elkhart area?

1 A Yes.

2 Q Is he employed by Conrail?

3 A I think he's retired. I saw him not long ago.

4 Q George Garman?

5 A David Garman.

6 Q Is he in the Elkhart area?

7 A I don't know if he still is or not.

8 Art Froelich. And that was like  
9 F-r-o-e-l-i-c-h or something like that.

10 Q Does he still work for Conrail?

11 A I don't know.

12 Q Do you know if he's in the Elkhart area?

13 A I don't know.

14 Q Any others?

15 A I used to see him around once in a while.

16 There was a trainmaster by the name of  
17 Andresen, I think. A-n-d-r-e-s-e-n, something like  
18 that. I think it was Bill Andresen, but I'm not  
19 sure.

20 Q Does he work for Conrail now?

21 A I don't know.

22 And I don't know who was on duty that night.  
23 And there may have been other yardmasters or  
24 trainmasters. I wouldn't be surprised.

25 Q Going back again to the yardmaster speaking over



1 the loudspeaker, would that be unusual that he  
2 would kind of make an announcement that there was  
3 an accident on a certain track like this; or is  
4 that within the yardmaster's duties to do something  
5 like that?

6 A I wouldn't call it duties. But there was --  
7 anything that might be considered of interest, if  
8 he had the time, he might pass that along.

9 I mean one of my -- aside from this incident,  
10 one of my former neighbors who also worked, for a  
11 short time, on the railroad, went out one night and  
12 caused injury to another person. And we got the  
13 word from the yardmaster, "Hey, did you hear  
14 about . . ."

15 Q So the yardmaster was sort of a self-appointed  
16 journalist of sorts?

17 A He told us what he knew we'd want to know, just  
18 like we would have told him.

19 Q Okay. What about spill reports; were there any  
20 spill reports that you know of?

21 A I don't know anything about that sort of thing.

22 Q Accident reports?

23 A That either. Because, actually, our main thing  
24 was to deal with the cards and the waybills and  
25 to --

1 Q Who would know about a spill report if there was  
2 one?

3 A I would think, ultimately, the terminal  
4 superintendent if not the trainmasters or someone  
5 along that line.

6 I would expect the terminal superintendent to  
7 know anything of any importance that was going on  
8 in the yard.

9 Q You may have answered this already, but who was the  
10 terminal superintendent between 1966 and 1969?

11 A I don't know.

12 Q Have you ever heard of another car jumping the  
13 tracks and having a coupling puncture it?

14 A No, never.

15 Q But you have heard of cars jumping the track, as  
16 you testified earlier?

17 A Oh, yes.

18 Q After the car was punctured, how long did it stay  
19 in the track or the yard; do you know?

20 A No, I don't. I'm thinking that it was probably  
21 there for, you know, one to three weeks or  
22 somewhere in that time frame. It was there for a  
23 while.

24 Q Where would it go? Is there a car repair shop that  
25 it would have gone to to be welded?

1           A    Yes.  And that would be No. 6 on the diagram  
2               (indicating).

3           Q    No. 6, which --

4           A    Not necessarily to be welded.  But it would go to  
5               the car shop for them to deal with it.

6                       If there would be -- I would expect that that  
7               would be the location of where any remaining  
8               contents would have been pumped out of it and where  
9               it would be checked over to see if it was okay to  
10              move back to -- and I don't know if those companies  
11              had their own car shops or if they would have a  
12              contract with some railroad to repair their cars or  
13              what.

14          Q    Do you remember who was working in the car shop at  
15               that time?

16          A    No.

17          Q    And you say it was there for about a week?

18          A    Well, I'm thinking that it was there for one to  
19               three weeks.  It was there for a period of time.  
20               It didn't leave within a day or two; I do know  
21               that.

22          Q    How do you know that?

23          A    Because it kept coming across the hump.  So I saw  
24               it humped several times.

25          Q    So the practice, then, is to, if the car is in the

1 way, they'd had to rehump it to get it out of the  
2 way of other --

3 A Now, you might have a string of 20 cars that had  
4 one thing or another wrong with them down at the  
5 car shop area. And so maybe they'd fix this car;  
6 that was simple enough. And we got this one done  
7 and so on.

8 This one off to the side maybe had more major  
9 stuff. And now they put that in with the rest,  
10 take them back up to the hill or the hump, send  
11 them across.

12 And the ones that were ready to go, they put  
13 them to the appropriate track based upon their  
14 destination.

15 And yet those that are still in need of  
16 repair were not fit for travel, send them back to  
17 the car shops.

18 Q Was the hole in this car that we're talking about  
19 punched in or out; do you remember?

20 A It was -- I'll just say I don't know.

21 I -- it was consistent with what I -- I had  
22 no reason to believe it was punched out. What I  
23 saw was consistent with what I'd heard about  
24 something puncturing it, going from out and going  
25 in.

1 Q When cars are humped and there's a line of cars on  
2 the track -- right?

3 A Uh-huh.

4 Q -- and a new car is coming down the hump, and it's  
5 approaching the line of cars, is that line of  
6 cars -- those are all coupled together; is that  
7 right?

8 A Some of them couple automatically as they arrive  
9 in and make contact with the car that's already  
10 there.

11 Some of them -- say, if both knuckles on  
12 the cars are in a closed position, they'll just  
13 hit. And they'll need to be coupled up at a later  
14 point.

15 But if -- I don't know if you need one or  
16 both knuckles to be opened for when they hit for  
17 them to couple up. But if they're both closed,  
18 they won't --

19 Q Are there ever empty cars that are humped in line  
20 with full cars?

21 A Oh, yes. Just as much as the --

22 Q So some cars are not coupled and are not full?

23 A Right.

24 Q So it's possible, then, that a full tanker car  
25 would collide with an empty uncoupled car?

1           A    Uh-huh.

2           Q    How much speed do these cars usually have as  
3               they're being humped? I realize that depends on  
4               the weight of the cars.

5           A    Yes. And yet I don't know -- all I know is, it  
6               was my understanding that, with the computer system  
7               of that day, the whole idea was that, all things  
8               being considered, the car would arrive at its  
9               point on the track and come into contact with any  
10              car on the track with no greater than two miles an  
11              hour.

12          Q    And that's so that what?

13          A    No damage to the contents and so on.

14          Q    You may have answered this already, but I don't  
15               remember. Why did you look at the waybill on this  
16               damaged car?

17          A    Well, I looked at the waybill -- this is something  
18               we haven't discussed before.

19                       I looked at the waybill because the guy that  
20               I worked with told me that I missed some heavy  
21               cars. And I said, "What?"

22                       Well, I'm a detail-oriented person, and I  
23               don't miss three of anything. And there were three  
24               heavy cars in a row, okay? And heavy was  
25               considered anything over 200,000 pounds. And

1           that's why we mention in here the 200,000 pounds.

2           He said, "Oh, yeah. Look."

3           So I went out to the bill rack and I looked,  
4           and those cars were marked heavy. In other words,  
5           the classification clerk was telling me that he  
6           had marked heavy on his cars and that I had missed  
7           it.

8           No, I did not. I didn't pursue that; never  
9           made a thing out of it. Because after this  
10          incident, I'm unaware of any hearings or anybody's  
11          being on the line for disciplinary action or  
12          anything like that. So I didn't make a big deal  
13          out of it.

14          Had he tried to stick me with that, I would  
15          have pursued it.

16          Q    I see.

17          A    In any case, what he should have done was marked  
18          Streator Santa Fe, 69, heavy. Or if Streator Santa  
19          Fe was already printed on the waybill, he would  
20          commonly draw a line out with 69 heavy.

21          It was not unusual for the person in my  
22          position, or at least for me, to be preparing the  
23          hump list and to turn it over, see that a car was  
24          heavy and it had not been marked heavy. But I  
25          would not miss three heavies.

1 I'm looking right at the thing to begin with  
2 to know what to keypunch. I would not miss three  
3 heavies. I did not miss three heavies.

4 It's my contention that he, upon knowing that  
5 this thing had taken place, retrieved those  
6 waybills, added HVY to them, and then when we were  
7 talking about it later, "Oh, yeah. You missed some  
8 heavies." I didn't miss anything.

9 And so -- because heavy would have been then  
10 marked on that switch list. And then the switchmen  
11 were not to cut them loose at the top of the hill.  
12 But they were to allow the cars still connected to  
13 the main line of cars to go over the hill until  
14 they reached the master retarder, at which time  
15 they'd stop, uncouple, and let the car go down from  
16 there.

17 Because they had found, apparently, that --  
18 it's my understanding that if they come loose at  
19 the top and let them go through, if they weighed  
20 that much, that the master retarder could not  
21 handle it in every case. And so they were at risk  
22 of the car not being slowed to the desired speed,  
23 okay?

24 So these cars weren't marked heavy. And,  
25 again, it's my contention that he didn't mark them



1 heavy until after the fact.

2 And, again, when it comes to switching cars,  
3 they would switch -- normally, if you had, say, a  
4 string of Rock Islands, well, you switch them two  
5 at a time, okay?

6 Here we had three Streater Santa Fes, so my  
7 guess is that they switched either two and then one  
8 or one and then two.

9 I doubt very much that they cut them off  
10 separately because it was less time. You know, it  
11 was good business. I mean it was good procedure, I  
12 agree with it, that you would normally send two  
13 cars at a time if you could.

14 And so, of course, if they would have been  
15 marked heavy on the list, they wouldn't have been  
16 cut loose except from the master retarder.

17 So the most I ever heard out of that was when  
18 my supervisor asked, "Hey, what happened the other  
19 night?"

20 And I said, "What do you mean what happened?"  
21 And I gave him a bit of a smile. Because he knew  
22 and I knew what he was talking about.

23 And so, "You know what I'm talking about,"  
24 and I just (indicating), you know, didn't really  
25 answer him. And I just didn't hear anymore after

1           that.

2           Q    But it was your understanding that he was talking  
3                about the carbon tetrachloride tanker that had  
4                ruptured?

5           A    Oh, yeah. Right. Because of this incident.

6                And, of course, the reason he was mentioning  
7                it to me was because he knew that that car weighed  
8                over 200,000 pounds and it was not marked heavy on  
9                the hump list.

10              And we didn't really get into the particulars  
11              because, you know, no need for me to start throwing  
12              accusations around and start causing a ruckus  
13              unless I needed to. And -- because I wasn't being  
14              accused of anything.

15           Q    But you thought that you may be accused of  
16                something?

17           A    Oh, absolutely. This guy set me up. You know, he  
18                was covering his tracks in a hurry.

19              And so that is why I paid particular  
20              attention to these cars. I weighed that car after  
21              the fact.

22              I kept all that stuff until about a year  
23              before this stuff came up in the paper where they  
24              put out this plea. I had weigh slips, car numbers,  
25              the whole bit.

1 Q So you kept these things up until a year --

2 A I'm a pack rat. I keeps things. I've got stuff  
3 from my high school days and all this and that.

4 I have a check from the railroad for 15  
5 cents because I thought it was so ridiculous that  
6 they cut it. I never cashed it; I saved it. I  
7 still have it.

8 So I had this stuff. Nothing more ever  
9 came of it, and I forgot about it, and it was  
10 stuffed in a box. And I was going through some  
11 stuff, I don't know, probably about six, seven  
12 years ago, and thought, I don't need this, and  
13 threw it out.

14 So -- but that's the reason why I looked at  
15 the waybill; which I hadn't really been  
16 specifically asked before.

17 Q So this incident has a lot more meaning to you  
18 than --

19 A Oh, yeah.

20 Q -- a possible accident out there?

21 A Yeah. And so --

22 MR. CUNNINGHAM: Wait a minute.

23 Is there a question before the  
24 witness?

25 I mean I don't mind listening,

1 but I think it helps to get focused a  
2 little bit. I'm not being critical;  
3 I'm just saying let's get a question  
4 and an answer.

5 MR. JAFFE: I think we're  
6 listening to his description of why  
7 he looked at the waybill.

8 MR. CUNNINGHAM: I know. But I  
9 think he's answered a number of other  
10 things along with it, so let's --  
11 it's not your fault. Let's just go  
12 ahead and get it over with.

13 A And, believe me, if I felt any guilt about any of  
14 this -- and I don't -- if I would have called the  
15 EPA at all, it definitely would have been  
16 anonymously, as they had offered.

17 But I didn't hesitate to give my name because  
18 I've got no problem with what I did here.

19 BY MR. LINDLAND:

20 Q You referred to a letter that was sent by your  
21 company to the company that owned the tanker --

22 A Right.

23 Q -- and you referred to the beveling of the wheels.

24 A Right.

25 Q Could you just detail what beveling is on these

1 wheels?

2 MR. CUNNINGHAM: I think that's  
3 been asked and answered, hasn't it?

4 A As far as what beveling is, I --

5 BY MR. LINDLAND:

6 Q What do you mean by --

7 MR. CUNNINGHAM: I think we are  
8 getting into repetition.

9 MR. JAFFE: I don't think so.

10 MR. LINDLAND: I don't remember --  
11 I remember a question about whether  
12 the wheels are retarded, but I don't  
13 remember --

14 MR. CUNNINGHAM: I'm not trying  
15 to cut you short, but I remember the  
16 good Mr. Lambert asked him some  
17 questions about that as well.

18 MR. LAMBERT: I don't remember  
19 asking him that particular question.

20 A My perception of what beveling is about is, you  
21 know, is that I really don't know; other than I  
22 know that the retarders would squeeze those  
23 wheels. But how that works exactly, I don't know  
24 what, you know, exact -- how the beveling affects  
25 that.

1 I just assumed, to my way of thinking -- this  
2 is in response to this incident, and so that's why  
3 I agree that that was --

4 BY MR. LINDLAND:

5 Q Why did you look at the letter? I mean was that  
6 part of your job or does this kind of relate to  
7 your general concern for this incident?

8 A No. The letter was just simply lying out on a desk  
9 in the open, in a common area, where any employee  
10 would be able to see it. So I saw that and read  
11 it.

12 MR. LINDLAND: I have no further  
13 questions.

14 MR. WOODSMALL: I have a couple  
15 of questions, if I could.

16 CROSS-EXAMINATION

17 BY MR. WOODSMALL:

18 Q Claude, I'm Jim Woodsmall. I represent Elkhart  
19 Office Machines.

20 You said you weighed the car after the  
21 accident. Do you remember what it weighed after  
22 the accident?

23 A No, I don't.

24 Q What other action did you take after the accident?

25 A None.

1 Q That was the only one? Okay.

2 Is there a waybill for empty cars?

3 A Either a paper one or in the form of an IBM card at  
4 that time. So you could have the form -- instead  
5 of the contents being there, it would just say  
6 empty.

7 On the other hand, instead of somebody  
8 sending a sheet of paper through like that, it may  
9 just be the IBM card that we used to be familiar  
10 with.

11 Q You mentioned a trainmaster by the name of Bill  
12 Andresen; do you know where he lives?

13 A No.

14 Q What about Joe Mayo; could you please spell Mayo?

15 A M-a-y-o.

16 Q Do you know where he lives?

17 A If you'll look in the phone book, check Rebecca  
18 Drive. I don't know why, but that sticks in my  
19 mind.

20 Actually, I just recently threw away his  
21 business card. He gave it to me. He has a booth  
22 or something in one of the Nappanee antique malls I  
23 think.

24 Q In Nappanee, Indiana?

25 A Right.

1       A    And I saw him, I think, at Concord Mall during one  
2            of the exhibits there. I saw him somewhere.

3       Q    The map that is attached to Brewton Exhibit No. 1  
4            refers to a "cleanout track" as item No. 5.

5                    Could you tell me what a cleanout track is?

6       A    I don't know what that is.

7       Q    Okay. Just below the No. 5 and a little bit to the  
8            right, there's some markings in the white area. Do  
9            you know what that is?

10      A    No.

11      Q    Other than the grain spills and this one spill of  
12            carbon tetrachloride, are there any other spills  
13            that you're aware of of any substances?

14      A    No.

15      Q    Do you recall the names of any other persons that  
16            you worked with at the yard at this time, other  
17            than those that you've given us today?

18      A    People -- just the names?

19      Q    Yes.

20      A    A number of them I would know.

21      Q    Can you give me those names and if you know their  
22            address or if they're alive?

23      A    Virgil Hoese, H-o-e-s-e. He still works there.  
24            Frank Lennox.

25      Q    Spell Lennox.



1 A L-e-n-n-o-x. He lives in Michigan, I believe.

2 Q Does he still work at Conrail?

3 A Last I knew he still did.

4 Q Where in Michigan does he live, if you know?

5 A I don't know.

6 Q Around Union or one of those close-in towns?

7 A Right.

8 Q Okay.

9 A Let's see. There was Harold Deschene, but he's  
10 really ill, very ill. You shouldn't contact  
11 him. And he worked -- he wouldn't have been  
12 working during those hours.

13 In fact, I don't even know what hours  
14 these other people would have been working at  
15 the time.

16 There was somebody named Rogers, last name  
17 Rogers. I can't think of his true first name.  
18 Emerson Emmons.

19 Q Emmons?

20 A E-m-m-o-n-s.

21 Q Does he live in Elkhart?

22 A He's retired. He's in Michigan.

23 I think Rogers is retired.

24 Bob Sheler, I think, is one guy's name. He's  
25 retired.

1 Q Spell the last name, please.

2 A Some of the guys may not even be alive anymore.

3 Q Spell Sheler.

4 A S-h-e-l-e-r, I think.

5 Q You said he's retired?

6 A He should be, long ago. Dwayne Stuck.

7 Q S-t-u-c-k?

8 A Yes. Lowell Stuck, Leon Stuck; they're all  
9 brothers.

10 Q They still work at Conrail; do you know?

11 A I think they're all retired.

12 Q They live in Elkhart?

13 A Union or in that area.

14 Let's see. Jerrold Bushong, Jerry Bushong.

15 Q How do you spell the last name?

16 A B-u-s-h-o-n-g.

17 Q Does he live in Elkhart?

18 A Last I knew, but I don't know where.

19 Q Does he still work at Conrail?

20 A I don't know. The only one I really know still  
21 works at Conrail is Virgil Hoese. I see him every  
22 once in a while.

23 Let's see. Oh, yeah. My former  
24 brother-in-law, Jim Gunn, G-u-n-n. He still works  
25 there.

1 I can't think of any others right offhand.

2 (Recess taken.)

3 Q Claude, what happened to the spilled carbon  
4 tetrachloride?

5 A I don't know.

6 Q You don't know if there was any cleanup or  
7 anything else?

8 A No, I don't know.

9 Q Did you see the carbon tetrachloride on the  
10 ground?

11 A No. I was never at the location where this spill  
12 occurred.

13 Q When you saw the tank car with the hole in it,  
14 could you tell if there was any of the contents  
15 left in the tank car?

16 A I couldn't tell.

17 Q Tell us a little bit about waybills. What happens  
18 to the waybill when the car gets to its  
19 destination?

20 A My answer is I don't know. But I would think  
21 that it would go to the freight office. But I  
22 don't know.

23 Q Do you know if those waybills are retained?

24 A I don't know.

25 MR. WOODSMALL: Okay. That's

1 all I have.

2 MR. CUNNINGHAM: I have a few  
3 more questions, Claude, if you don't  
4 mind.

5 REDIRECT EXAMINATION

6 BY MR. CUNNINGHAM:

7 Q With regard to the alleged collision between two  
8 tank cars; again, you did not observe any such  
9 collision?

10 A Right. And I don't know if it was between two tank  
11 cars or --

12 Q Right.

13 A -- with a tank car and another car.

14 Q And I think you indicated that this coupling  
15 involved a good bit of noise in the yard; is that  
16 right?

17 When the cars would be coupled, there would  
18 be, as we're all familiar with, a good bit of noise  
19 involved.

20 A Yes.

21 Q The night that you're talking about, was there any  
22 noise of an extraordinary nature so as to call your  
23 attention to an event such as this?

24 A No. I don't recall hearing anything, and wouldn't  
25 have from my location.

1 Q And that would have, in all likelihood, been a  
2 significant enough sound for you to hear it?

3 A Not from my location. If someone were outdoors,  
4 they may have.

5 Q Okay. With regard to the reporting of such  
6 incidents, a spill of carbon tetrachloride would  
7 have ordinarily been turned in, I think you said,  
8 in those days, to either the train yard  
9 superintendent or someone in that capacity; is that  
10 right?

11 A With there being any type of an accident, well,  
12 then the yardmasters and trainmasters would have  
13 become aware of it. And what they would have done  
14 with it, I don't know.

15 Q In this particular case, of your own personal  
16 knowledge, do you know whether or not any written  
17 or verbal report was made to either of those type  
18 of officials?

19 A I don't know that there was anything written.

20 Q Do you know whether or not the police or fire  
21 department were notified of any such incident?

22 A Not to my knowledge.

23 Q And were you advised that the police and fire  
24 department had ever been notified by anyone  
25 else?

1 A No.

2 Q Did you ever see a report done by the police or  
3 fire department regarding the spill?

4 A No.

5 Q You're familiar with the chemical compound carbon  
6 tetrachloride?

7 A Not really. I asked someone at the time, you know,  
8 "What is that used for? What is that stuff?" And  
9 they said it was used in dry cleaning. But that's  
10 the only thing I knew about it.

11 Q Were you aware of the flammability of such a  
12 substance?

13 A No.

14 Q But, to your knowledge, no fire department ever  
15 responded to such a call --

16 A I don't know if --

17 Q -- to the yard that night?

18 A I don't recall them arriving. They could have been  
19 there without my knowledge for that matter, but I  
20 don't know if they were called or not.

21 Q And usually the fire department would keep a record  
22 of that, would they?

23 MR. LINDLAND: Objection.

24 BY MR. CUNNINGHAM:

25 Q Based on your knowledge as a police officer?

1           A    Nowadays -- and I would think back then, they would  
2                have a record of it. I don't know that they would  
3                keep it to this day.

4           Q    In other words, if there's a fire or police call,  
5                usually the police or fire department keeps a  
6                record of a call, don't they?

7           A    Right.

8           Q    And your best recollection of when it occurred was  
9                1969; is that right?

10          A    I'd say '66 to '69. But I'd start in '69 and work  
11                backwards if I were looking for it.

12          Q    Do you know if there were any newspaper accounts of  
13                this?

14          A    I don't recall any.

15          Q    And I think, in answer to the Elkhart Office  
16                Machines Attorney, you did not go to the scene of  
17                any such spill, and so you didn't see whether or  
18                not anything actually occurred?

19          A    No.

20          Q    Again, most of the information here today has  
21                not been within your personal knowledge, but  
22                rather what you heard from someone else; is that  
23                right?

24                       MR. LAMBERT: I object to the  
25                       "most of" characterization.

1 MR. CUNNINGHAM: Well, we'll  
2 get --

3 MR. LAMBERT: The record will  
4 reflect what is and what isn't.

5 MR. CUNNINGHAM: Mr. Lambert,  
6 we'll get to that.

7 MR. LAMBERT: All right.

8 BY MR. CUNNINGHAM:

9 Q The only thing that, as I understand your  
10 testimony, you knew about was the observation you  
11 made of one tank car with a hole in it; isn't that  
12 right?

13 MR. LINDLAND: That's asked and  
14 answered.

15 BY MR. CUNNINGHAM:

16 Q Is that right?

17 MR. LAMBERT: Objection.

18 MR. CUNNINGHAM: He can answer  
19 the question; you can object to it.

20 MR. LAMBERT: I object to it  
21 because it's leading. I object to it  
22 because it's a mischaracterization of  
23 his testimony.

24 You can answer it.

25 A I saw the hole in the tank car. I saw the waybill



1           for that same tank car.

2           The waybill indicated that there was an  
3           excess of 200,000 pounds in it. And I weighed the  
4           tank car after seeing the hole in it, and it  
5           weighed less than 100,000 pounds.

6           BY MR. CUNNINGHAM:

7           Q   Other than those two things, was there anything of  
8           your own personal knowledge that you can state here  
9           today?

10          A   Not in regards to -- not in regards to this.

11          Q   Okay. With regard to waybills, you indicated, I  
12          believe, that they're not always accurate; is that  
13          correct?

14          A   I think that's a safe assumption.

15          Q   There are errors that do occur; is that right?

16          A   Uh-huh.

17          Q   And you rely on those waybills, do you not?

18          A   Right. My job was to correct what was more often  
19          incorrect, and that would be the IBM card.

20               Sometimes there would be a shipment, say, of  
21          lumber that was already in transit. And the broker  
22          would then sell that shipment which was already en  
23          route, as I recall.

24               And then we would be notified and could  
25          change the car to show -- or the information to

1 show where it was truly going.

2 Q So that whether or not there was, in fact, carbon  
3 tetrachloride in that tank car that you observed  
4 with a hole in it, you cannot say?

5 A I can't say.

6 Q The only thing you can say is that a waybill had  
7 such information on it related to that tank car; is  
8 that what you're saying?

9 A Yes.

10 Q But, as far as your own personal knowledge, you  
11 cannot so state what was in that tank car; is that  
12 right?

13 A True.

14 Q Now, the letter that you refer to in answer to  
15 some of the questions here in your affidavit, you  
16 have said that was a letter from Conrail, didn't  
17 you?

18 A Right. Getting it all mixed up as far as when  
19 Conrail came into the picture instead of Penn  
20 Central.

21 Q But that was on the statement?

22 A Right, it was.

23 Q Do you have a copy of that letter?

24 A A copy of which letter?

25 Q The letter that was written regarding the beveling

1 of the wheels.

2 A No, I don't.

3 Q Did you keep a copy of it?

4 A No, I didn't.

5 Q Did it have anything to do with a claim by the  
6 owner of the cargo with regard to insurance? Do  
7 you know or --

8 A It -- as I recall, it was a short letter and didn't  
9 get into anything other than, you know,  
10 recommending that they change the beveling of the  
11 wheels.

12 And I made the connection myself, whether  
13 it's correct or not, that it was as a result of  
14 this incident.

15 Q Do you know whether there was any adjuster,  
16 insurance investigator, that investigated on behalf  
17 of the cargo owner afterwards?

18 A I don't know.

19 Q Did you ever talk to anybody about that?

20 A No.

21 Q There were some questions about accidents in the  
22 yard. And I think you said they were few and far  
23 between; is that correct?

24 A Yeah. It's -- well, to my way of thinking, they  
25 were -- we didn't have them every day and not

1 necessarily every week. And seldom was there  
2 something major.

3 Q Let's go back just a minute to the waybills for a  
4 minute.

5 Again, you would look basically at  
6 information that was on a waybill with regard to  
7 cargo and the weight and the destination of the  
8 cargo; isn't that right?

9 A Right.

10 Q And whether or not, for example, this or that car  
11 contained the kind of cargo that was indicated on  
12 the waybill, you took that on faith, not on your  
13 personal observation; isn't that right?

14 A That's correct.

15 Q I mean you had to do that, with the sheer volume;  
16 isn't that right, Claude?

17 A True.

18 Q That would be true with the weight and with regard  
19 to designation; isn't that right?

20 A Yes.

21 Q And you did this without verifying it because there  
22 was just too many going -- too much going through  
23 the yard to be able to personally go out and  
24 observe --

25 A And there was no desire to do so anyhow.

1 MR. LINDLAND: Objection,  
2 leading.

3 BY MR. CUNNINGHAM:

4 Q Now, the US Attorney asked you a question about  
5 after the car was punctured, you observed this and  
6 that. I can't remember the exact complete  
7 question.

8 But, with respect to the "after the car was  
9 punctured," you don't know whether it was  
10 punctured, do you yourself? I think you've --

11 A As far as direct witnessing?

12 Q Personal knowledge.

13 A I didn't watch it happen.

14 Q This was someone else's theory that was passed on  
15 to you; is that a fair statement?

16 A I was told that's the tank car.

17 Q The US Attorney asked you about a statement that I  
18 took from you; do you recall that?

19 A Yes.

20 Q That statement was taken with this particular court  
21 reporter present; is that right?

22 A Yes.

23 Q And were the answers that you gave there any  
24 different than they are today?

25 A I don't know of any differences. The questions

1           that you and I have discussed today are basically  
2           the same.

3           Q    Okay. Did I give you a copy of that?

4           A    Yes, you did.

5           Q    Did I give you an opportunity to change that?

6           A    Yes.

7           Q    In any way you wanted to?

8           A    Yes.

9           Q    And that was a sworn statement, was it not?

10          A    Yes.

11          Q    Under oath?

12          A    Yes.

13                       MR. CUNNINGHAM: Thank you.

14                       That's all the questions I have.

15                       RE CROSS-EXAMINATION

16           BY MR. LAMBERT:

17          Q    We have not seen the statement Mr. Cunningham  
18                took.

19                       Do you recall whether he asked you about  
20                whether you saw a waybill or not?

21          A    Not specifically.

22                       But I -- there was discussion about waybills,  
23                so I'm sure that I brought it out that I looked at  
24                the waybill.

25                       MR. CUNNINGHAM: Do you have

1 a copy of that statement?

2 THE WITNESS: At home.

3 MR. CUNNINGHAM: Do you have --

4 THE WITNESS: Or at my office,  
5 rather.

6 MR. CUNNINGHAM: Do you have  
7 any objection to giving that as part  
8 of this record?

9 THE WITNESS: No, it's fine  
10 with me.

11 BY MR. LAMBERT:

12 Q Do you have it here today?

13 A I don't have mine.

14 MR. CUNNINGHAM: I want you to  
15 give yours.

16 THE WITNESS: Oh, okay.

17 MR. LAMBERT: Can we have yours?

18 MR. CUNNINGHAM: No.

19 MR. JAFFE: I'd like to request  
20 yours. I'd like to do it here,  
21 formally, on the record. I'd like to  
22 request it.

23 MR. CUNNINGHAM: Well --

24 MR. LAMBERT: I think his  
25 position is that we can't have it.

1 MR. CUNNINGHAM: That's right.

2 MR. LINDLAND: Are there notes  
3 on it or something?

4 MR. CUNNINGHAM: No.

5 MR. LINDLAND: Is it identical  
6 to the one that --

7 MR. CUNNINGHAM: Here's what  
8 I'm offering: I'm saying it's his  
9 property; I gave it to him.

10 If he wants to give it to you,  
11 fine. I have no objection. This is  
12 work product.

13 MR. JAFFE: Your ground is work  
14 product?

15 MR. CUNNINGHAM: Yes. But  
16 having given that to him, if he wishes  
17 to give it to you, fine. I have no  
18 objection.

19 MR. JAFFE: You don't believe  
20 that, by giving it to him, you've --  
21 that the work product privilege has  
22 been waived?

23 MR. CUNNINGHAM: I'm not going  
24 to debate with you today, Peter. If  
25 you want his copy and he wants to



1                   give it to you, fine.

2           BY MR. LAMBERT:

3           Q    I just have a couple more questions.

4                   Mr. Cunningham called your attention to the  
5           fact that the affidavit which you gave to the EPA  
6           referred to seeing a letter to Conrail, to the tank  
7           car company.

8           A    Right.

9           Q    Is it correct that you have never been employed by  
10          Conrail?

11          A    Right. You say they came into being in 1976?

12          Q    Right.

13          A    Okay. Right.

14          Q    Who were you employed with at the time of the  
15          incident that's referred to in Paragraph 5?

16          A    It would have been Penn Central. I hired out  
17          with New York Central, and then it became Penn  
18          Central.

19          Q    Did you mean, in Paragraph 5, to refer to your  
20          employer where it says "letter from ConRail"?

21          A    Yes.

22                   MR. LAMBERT: I have no further  
23          questions.

24                   MR. CUNNINGHAM: I have nothing  
25          further.

1 MR. WOODSMALL: I have nothing.

2 MR. CUNNINGHAM: We'd like  
3 signature on this.

4 (Deposition concluded and witness  
5 excused at 4:10 p.m.)

6 \* \* \*

7

8

\_\_\_\_\_  
CLAUDE BREWTON

9

10 SUBSCRIBED AND SWORN TO before me this  
11 \_\_\_\_\_ day of \_\_\_\_\_, 1992.

12

13

\_\_\_\_\_  
Notary Public, State of Indiana

County of Residence: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE

I, Annette S. Hyndman, Notary Public in and for the County of Elkhart and State of Indiana, hereby certify there appeared before me on SEPTEMBER 3, 1992, CLAUDE BREWTON, who was previously duly sworn to testify the truth, the whole truth, and nothing but the truth to questions propounded at the taking of the foregoing deposition in a cause now pending and undetermined in said court.

I further certify that I then and there reported in machine shorthand the proceedings at the said time and place; that the proceedings were then transcribed from my original shorthand notes; and that the foregoing typewritten transcript is a true and correct record thereof.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 1992.

*Annette S. Hyndman*

Annette S. Hyndman  
Notary Public, State of Indiana  
Residence: Elkhart County  
My Commission Expires: 9-23-94

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

United States of America,

Plaintiff,

v.

Consolidated Rail Corporation,  
a/k/a Conrail,

Defendant.

Civil Action No.  
S90-00056

Judge Robert J. Miller

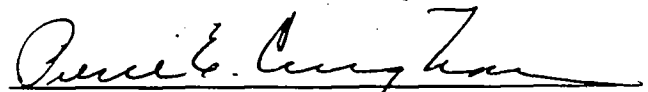
NOTICE TO TAKE DEPOSITION

TO: All Counsel of Record:

Please take notice that on September 3, 1992, at 10:00 a.m., Defendant Penn Central, by and through counsel, will take the deposition of Ted Berkshire at the offices of Midwest Reporting, 300 N. Michigan Street, South Bend, Indiana 46601, before a notary public and court reporter, or such other officer of like qualifications whom he may designate.

Said deposition shall be taken pursuant to the Federal Rules of Civil Procedure for use at trial herein.

You are invited to attend and participate.

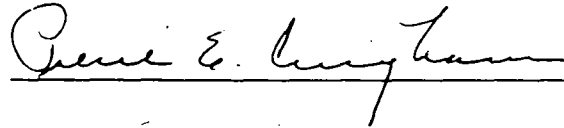
  
Pierce E. Cunningham  
Supreme Court No. 0025233  
Attorney For Penn Central Corp.  
2500 Central Trust Center  
Cincinnati, Ohio 45202  
(513) 651-6800

OF COUNSEL:

Frost & Jacobs  
2500 Central Trust Center  
Cincinnati, Ohio 45202  
(513) 651-6800

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing  
Notice of Deposition was served upon the counsel listed below  
via regular U.S. mail, this 6<sup>th</sup> day of August, 1992.

  
\_\_\_\_\_

Peter E. Jaffe, Esq.  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Clifford Johnson, Esq.  
Assistant United States Attorney  
204 South Main Street  
M01 Federal Building  
South Bend, Indiana 46601

Janet Carlson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
230 S. Dearborn Street  
Chicago, IL 60604

Paul J. Lambert  
James A. Ermilio  
Bingham, Dana & Gould  
1550 M Street, N.W.  
Suite 1200  
Washington, D.C. 20005

Philip R. Boxell, Jr.  
Pepper, Hamilton & Scheetz  
3000 Two Logan Square  
18th & Arch Streets  
Philadelphia, PA 19103-2799

Robert A. Freeman

Paul F. Ware, Jr.  
Goodwin, Procter & Hoar  
Exchange Place  
Boston, MA 02109-2881

Thomas H. Singer  
Nickle and Plasecki  
205 West Jefferson  
Suite 413  
South Bend, IN 46601

Pierre C. Talbert  
Foley & Lardner  
70 West Madison Street  
3 First Nat'l Plaza  
Suite 4950  
Chicago, IL 60602-4208

James V. Woodsmall  
Warrick, Weaver & Brown  
121 West Franklin Street  
Midwest Commerce Bldg.  
Suite 400  
Elkhart, IN 46516-3284

4212T/62